

EXHIBIT G

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JENS ERIK SORENSEN, as Trustee of
12 SORENSEN RESEARCH AND
13 DEVELOPMENT TRUST,

14 Plaintiff,

15 vs.

16 THE BLACK & DECKER CORPORATION,

17 Defendants.

Case No. 06cv1572-BTM (CAB)

PROTECTIVE ORDER

18 The Court hereby GRANTS the parties' Joint Motion for Entry of Protective Order, with
19 modifications to Paragraphs 12 and 28. [Doc. No. 42.]

20 The Court recognizes that at least some of the documents and information ("materials")
21 being sought through discovery in the above-captioned action are, for competitive reasons,
22 normally kept confidential by the parties. The parties have agreed to be bound by the terms of
23 this Protective Order ("Order") in this action.

24 The materials to be exchanged throughout the course of the litigation between the parties
25 may contain trade secret or other confidential research, technical, cost, price, marketing or other
26 commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The
27 purpose of this Order is to protect the confidentiality of such materials as much as practical
28 during the litigation. THEREFORE:

DEFINITIONS

1. The term “Confidential Information” shall mean and include information contained or disclosed in any materials, including documents, portions of documents, answers to interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived therefrom that is deemed to be Confidential Information by any party to which it belongs.

2. The term “materials” shall include, but shall not be limited to: documents; correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other material that identify customers or potential customers; price lists or schedules or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk diaries; appointment books; expense accounts; recordings; photographs; motion pictures; compilations from which information can be obtained and translated into reasonably usable form through detection devices; sketches; drawings; notes (including laboratory notebooks and records); reports; instructions; disclosures; other writings; models and prototypes and other physical objects.

3. The term “counsel” shall mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed in the law firms identified below:

Kaler Law Offices

Kramer Law Office

Law Office of Patricia Shackelford

Jaczko Goddard LLP

Niro, Scavone, Haller & Niro

“Counsel” shall also include Chris Kuczinski, in-house attorneys for Plaintiff; and John DelPonti, Charles Yocum, and Mehul Jani, in-house attorneys for Defendant.

GENERAL RULES

4. Each party to this litigation that produces or discloses any materials, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, or information that the producing party believes should be subject to this Protective Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

a. Designation as “CONFIDENTIAL”: Any party may designate information as “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the unrestricted disclosure of such information could be potentially prejudicial to the business or operations of such party.

b. Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any party may designate information as “CONFIDENTIAL - FOR COUNSEL ONLY” only if, in the good faith belief of such party and its counsel, the information is among that considered to be most sensitive by the party, including but not limited to trade secret or other confidential research, development, financial or other commercial information.

5. In the event the producing party elects to produce materials for inspection, no marking need be made by the producing party in advance of the initial inspection. For purposes of the initial inspection, all materials produced shall be considered as “CONFIDENTIAL - FOR COUNSEL ONLY,” and shall be treated as such pursuant to the terms of this Order. Thereafter, upon selection of specified materials for copying by the inspecting party, the producing party shall, within a reasonable time prior to producing those materials to the inspecting party, mark the copies of those materials that contain Confidential Information with the appropriate confidentiality marking.

6. Whenever a deposition taken on behalf of any party involves a disclosure of Confidential Information of any party:

a. said deposition or portions thereof shall be designated as containing Confidential Information subject to the provisions of this Order; such designation shall be made on the record whenever possible, but a party may designate portions of

1 depositions as containing Confidential Information after transcription of the
2 proceedings; a party shall have until fifteen (15) days after receipt of the deposition
3 transcript to inform the other party or parties to the action of the portions of the
4 transcript designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL
5 ONLY;"

6 b. the disclosing party shall have the right to exclude from attendance at
7 said deposition, during such time as the Confidential Information is to be disclosed, any
8 person other than the deponent, counsel (including their staff and associates), the court
9 reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and

10 c. the originals of said deposition transcripts and all copies thereof shall
11 bear the legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY,"
12 as appropriate, and the original or any copy ultimately presented to a court for filing
13 shall not be filed unless it can be accomplished under seal, identified as being subject to
14 this Order, and protected from being opened except by order of this Court.

15 7. All Confidential Information designated as "CONFIDENTIAL" or
16 "CONFIDENTIAL - FOR COUNSEL ONLY" shall not be disclosed by the receiving party to
17 anyone other than those persons designated herein and shall be handled in the manner set forth
18 below and, in any event, shall not be used for any purpose other than in connection with this
19 litigation, unless and until such designation is removed either by agreement of the parties, or by
20 order of the Court.

21 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" shall be
22 viewed only by counsel (as defined in paragraph 3) of the receiving party, and by independent
23 experts under the conditions set forth in this Paragraph. The right of any independent expert to
24 receive any Confidential Information shall be subject to the advance approval of such expert by
25 the producing party or by permission of the Court. The party seeking approval of an
26 independent expert shall provide the producing party with the name and curriculum vitae of the
27 proposed independent expert, and an executed copy of the form attached hereto as Exhibit A, in
28 advance of providing any Confidential Information of the producing party to the expert. Any

1 objection by the producing party to an independent expert receiving Confidential Information
2 must be made in writing within fourteen (14) days following receipt of the identification of the
3 proposed expert. Confidential Information may be disclosed to an independent expert if the
4 fourteen (14) day period has passed and no objection has been made. The approval of
5 independent experts shall not be unreasonably withheld.

6 9. Information designated "CONFIDENTIAL" shall be viewed only by counsel (as
7 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the terms of
8 paragraph 8), and by the additional individuals listed below, provided each such individual has
9 read this Order in advance of disclosure and has agreed in writing to be bound by its terms:

10 a. Executives who are required to participate in policy decisions with
11 reference to this action;

12 b. Technical personnel of the parties with whom Counsel for the parties find
13 it necessary to consult, in the discretion of such counsel, in preparation for trial of this
14 action; and

15 c. Stenographic and clerical employees associated with the individuals
16 identified above.

17 10. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL -
18 FOR COUNSEL ONLY," any person indicated on the face of the document to be its originator,
19 author or a recipient of a copy thereof, may be shown the same.

20 11. All information which has been designated as "CONFIDENTIAL" or
21 "CONFIDENTIAL - FOR COUNSEL ONLY" by the producing or disclosing party, and any
22 and all reproductions thereof, shall be retained in the custody of the counsel for the receiving
23 party identified in paragraph 3, except that independent experts authorized to view such
24 information under the terms of this Order may retain custody of copies such as are necessary for
25 their participation in this litigation.

26 12. Before any materials produced in discovery, answers to interrogatories,
27 responses to requests for admissions, deposition transcripts, or other documents which are
28 designated as Confidential Information are filed with the Court for any purpose, the party

1 seeking to file such material shall seek permission of the Court to file said material under seal.
2 The parties will follow and abide by applicable law, including Civ. L.R. 7.3, and the chambers
3 rules of the judge who will hear the motion, with respect to filing documents under seal in this
4 Court.

5 13. At any stage of these proceedings, any party may object to a designation of the
6 materials as Confidential Information. The party objecting to confidentiality shall notify, in
7 writing, counsel for the designating party of the objected-to materials and the grounds for the
8 objection. If the dispute is not resolved consensually between the parties within seven (7)
9 business days of receipt of such a notice of objections, the objecting party may move the Court
10 for a ruling on the objection. The materials at issue shall be treated as Confidential Information,
11 as designated by the designating party, until the Court has ruled on the objection or the matter
12 has been otherwise resolved.

13 14. All Confidential Information shall be held in confidence by those inspecting or
14 receiving it, and shall be used only for purposes of this action. Counsel for each party, and each
15 person receiving Confidential Information shall take reasonable precautions to prevent the
16 unauthorized or inadvertent disclosure of such information. If Confidential Information is
17 disclosed to any person other than a person authorized by this Order, the party responsible for
18 the unauthorized disclosure must immediately bring all pertinent facts relating to the
19 unauthorized disclosure to the attention of the other parties and, without prejudice to any rights
20 and remedies of the other parties, make every effort to prevent further disclosure by the party
21 and by the person(s) receiving the unauthorized disclosure.

22 15. No party shall be responsible to another party for disclosure of Confidential
23 Information under this Order if the information in question is not labeled or otherwise identified
24 as such in accordance with this Order.

25 16. If a party, through inadvertence, produces any Confidential Information without
26 labelling or marking or otherwise designating it as such in accordance with this Order, the
27 designating party may give written notice to the receiving party that the document or thing
28 produced is deemed Confidential Information, and that the document or thing produced should

1 be treated as such in accordance with that designation under this Order. The receiving party
2 must treat the materials as confidential, once the designating party so notifies the receiving
3 party. If the receiving party has disclosed the materials before receiving the designation, the
4 receiving party must notify the designating party in writing of each such disclosure. Counsel
5 for the parties shall agree on a mutually acceptable manner of labeling or marking the
6 inadvertently produced materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR
7 COUNSEL ONLY" - SUBJECT TO PROTECTIVE ORDER.

8 17. Nothing herein shall prejudice the right of any party to object to the production
9 of any discovery material on the grounds that the material is protected as privileged or as
10 attorney work product.

11 18. Nothing in this Order shall bar counsel from rendering advice to their clients
12 with respect to this litigation and, in the course thereof, relying upon any information designated
13 as Confidential Information, provided that the contents of the information shall not be disclosed.

14 19. This Order shall be without prejudice to the right of any party to oppose
15 production of any information for lack of relevance or any other ground other than the mere
16 presence of Confidential Information. The existence of this Order shall not be used by either
17 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
18 Procedure.

19 20. Nothing herein shall be construed to prevent disclosure of Confidential
20 Information if such disclosure is required by law or by order of the Court.

21 21. Upon final termination of this action, including any and all appeals, counsel for
22 each party shall, upon request of the producing party, return all Confidential Information to the
23 party that produced the information, including any copies, excerpts, and summaries thereof, or
24 shall destroy same at the option of the receiving party, and shall purge all such information from
25 all machine-readable media on which it resides. Notwithstanding the foregoing, counsel for
26 each party may retain all pleadings, briefs, memoranda, motions, and other documents filed with
27 the Court that refer to or incorporate Confidential Information, and will continue to be bound by
28 this Order with respect to all such retained information. Further, attorney work product

1 materials that contain Confidential Information need not be destroyed, but, if they are not
2 destroyed, the person in possession of the attorney work product will continue to be bound by
3 this Order with respect to all such retained information.

4 22. The restrictions and obligations set forth herein shall not apply to any
5 information that: (a) the parties agree should not be designated Confidential Information; (b)
6 the parties agree, or the Court rules, is already public knowledge; (c) the parties agree, or the
7 Court rules, has become public knowledge other than as a result of disclosure by the receiving
8 party, its employees, or its agents in violation of this Order; or (d) has come or shall come into
9 the receiving party's legitimate knowledge independently of the production by the designating
10 party. Prior knowledge must be established by pre-production documentation.

11 23. The restrictions and obligations herein shall not be deemed to prohibit
12 discussions of any Confidential Information with anyone if that person already has or obtains
13 legitimate possession thereof.

14 24. Transmission by facsimile is acceptable for all notification purposes herein.

15 25. This Order may be modified by agreement of the parties, subject to approval by
16 the Court.

17 26. The Court may modify the terms and conditions of this Order for good cause, or
18 in the interest of justice, or on its own order at any time in these proceedings. The parties prefer
19 that the Court provide them with notice of the Court's intent to modify the Order and the
20 content of those modifications, prior to entry of such an order.

21 27. In the event any documents, things and/or deposition testimony are sought and
22 obtained from a third party, such third party shall have the right to designate any such
23 documents, things and/or deposition testimony as "CONFIDENTIAL" or "CONFIDENTIAL -
24 FOR COUNSEL ONLY" Information in accordance with this Order, and the use of such
25 Confidential Information by any receiving party shall be governed in all respects by the terms of
26 this Order.

27 28. Upon the party's receipt of a discovery request calling for documents, things
28 and/or deposition testimony containing Confidential Information of a third party, the requested

1 party must notify in writing said third party or parties of the request for disclosure of the
2 confidential materials. If the third party approves disclosure of the Confidential Information,
3 any and all related documents, things, deposition testimony and/or information shall be
4 designated and produced in accordance with the provisions of this Order. If the third party does
5 not approve of the disclosure of its Confidential Information pursuant to this Order, the
6 requested party must immediately notify the requesting party who may then seek an Order from
7 this Court.

8 **IT IS SO ORDERED.**

9
10 Dated: December 12, 2006

11 
12 _____
13 **CATHY ANN BENCIVENGO**
14 United States Magistrate Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- EXHIBIT A -

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 JENS ERIK SORENSEN, as Trustee of
11 SORENSEN RESEARCH AND
12 DEVELOPMENT TRUST,

13 Plaintiff,

14 vs.

15 THE BLACK & DECKER CORPORATION,
16 Defendant.

Case No. 06cv1572-BTM (CAB)

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

17 I, _____, declare and say that:

18 1. I am employed as _____ by _____.

19 2. I have read the Protective Order entered in *Sorensen v. Black & Decker*, Case
20 No. 06cv1572, and have received a copy of the Protective Order.

21 3. I promise that I will use any and all "Confidential" or "Confidential - For
22 Counsel Only" information, as defined in the Protective Order, given to me only in a manner
23 authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

24 4. I promise that I will not disclose or discuss such "Confidential" or "Confidential -
25 For Counsel Only" information with anyone other than the persons described in paragraphs 3, 8
26 and 9 of the Protective Order.
27
28

1 5. I acknowledge that, by signing this agreement, I am subjecting myself to the
2 jurisdiction of the United States District Court for the Southern District of California with
3 respect to enforcement of the Protective Order.

4 6. I understand that any disclosure or use of "Confidential" or "Confidential - For
5 Counsel Only" information in any manner contrary to the provisions of the Protective Order
6 may subject me to sanctions for contempt of court.

7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 Date: _____

10
11 _____
12 Name:
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28